for The Defense

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The Training Newsletter for the Maricopa County Public Defender's Office ⊷ Dean Trebesch, Maricopa County Public Defender

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Child Sexual Abuse Accommodation Syndrome (CSAAS)-- It's Junk Science

by Carol Carrigan, Deputy Public Defender --Appeals Division

Foreword: *The following article was written for both the federal and state defense bars, and appeared in the April, 1996 issue of the AACJ magazine The Defender. Since its appearance, state practitioners have asked the effect that the Arizona Supreme Court Decision in Bible may have on the arguments proposed therein. State v. Bible, 175 Ariz. 549, 858 P.2d 1152 (1993). My answer is "None." As set forth in the article, whether you use Daubert (Part I of the article) or Frye (Part II of the article), "CSAAS" is inadmissible in a court of law. Furthermore, in Bible, the court merely refused to use the subject of DNA testing to decide whether to refine, replace, or abolish Frye holding that "We leave Daubert for another day."*

In addition, since the appearance of this article, Peter Balkan has sent me a copy of Roland Summit's 1992 article entitled "Abuse of the Child Sexual Abuse Accommodation Syndrome" in which Summit decries "the exploitation of a clinical concept as ammunition for battles in court."

Finally, this article does not discuss the argument that, if there is a reason to introduce CSAAS at all, introduction of CSAAS evidence can only be in rebuttal. If the defense does not raise the alleged victim's recantation, then the state has nothing to rebut and the evidence is irrelevant. Too often, the defendant's plea of not guilty is erroneously assumed to be the justification for use of CSAAS.

The accusation is C.M. [child molestation]. Once made, the man's life will never again be the same. Innocent men plead guilty to attempts rather than destroy their families and their lives with the draconian sentences which await conviction. No one wants to talk about it. Jurors would rather not think about it. Defense lawyers, like other citizens, recoil from the mention of the charges with the result that, for the most part, the private defense bar withdraws, leaving the defense to public defenders.

The case will be prosecuted with a zealousness which approaches religious fervor.

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In this community, the man who elects to defend his name, plead innocent, and leave his fate to a jury faces not merely criminal accusation and confrontation with his accuser, he must contradict and contravene a state "expert" who has no knowledge of his case but is permitted to testify at length to behavior of **someone else's** victims for whom the accusations are assumed to be true. Unlike the accused burglar for whom behavior of another's burglary victims is irrelevant or the accused thief from whose trial behavior of theft victims as a whole is precluded, the man accused of child molest must (although it has nothing to do with the accusations in **his** case) successfully confront the state's "expert" on "CSAAS"--a theory which its own author defends not for its forensic uses but only for treatment of children **assumed** to be victims.

CSAAS (Child Sexual Abuse Accommodation Syndrome) has become the darling of prosecutors of child molest cases and a cottage industry for certain "experts" upon whom the state repeatedly calls to bolster its case.

Yet, CSAAS is junk science. It has no place in the courtroom and the defense bar must actively oppose its insinuation by making the appropriate record.

I. "Child Sexual Abuse Accommodation Syndrome" is inadmissible under *Daubert*[1] which replaces the *Frye*[2] Rule for admission of scientific evidence.

Daubert replaces *Frye* for inquiry into admissibility of expert testimony. In order for expert testimony to be admissible, *Daubert* requires a hearing at which the proponent establishes:

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1. **Validity** ("helpfulness"); and
2. **Relevance**; after which:

the judge must decide whether, even though admissible as valid and relevant, the proposed evidence is in conformity with the other rules of evidence.

A hearing is required. In *Daubert*, the Supreme Court held that Rule 702 requires that the trial judge perform a "gatekeeping role" to regulate the matters to be presented to the jury:

> The primary locus of this obligation is Rule 702, which clearly contemplates some degree of regulation of the subjects and theories about which an expert may testify. 113 S. Ct. at 2795.

A. Validity

At the hearing, the proponent must first establish **validity**. Justice Blackmun wrote that Rule 702's "helpfulness" standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility:

> This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether that reasoning or methodology properly can be applied to the facts in issue. 113 S. Ct. at 2796.

Factors to be used in making the determination of validity under Rule 702 are:

a. Whether the theory or technique can be (and has been) **tested**.
b. Whether the theory or technique has been subjected to **peer review**.
c. The known or potential **rate of error**.
d. **General acceptance** of the theory or technique. 113 S. Ct. at 2796, 2797.

B. Relevance

The second of the two requirements of Rule 702 as discussed in *Daubert* is that the proffered testimony be **relevant**:

> Rule 702 further requires that the evidence or testimony "assist the trier of fact to understand the evidence or to determine a fact in issue." 113 S. Ct. at 2795.

An additional relevancy requirement was described by the Supreme Court as "fit"; that is, "whether expert testimony proffered in the case is sufficiently tied

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to the facts of the case that it will aid the jury in resolving a factual dispute." 113 S. Ct. at 2796.

As can be seen from the above, testimony on the "theory" of "Child Sexual Abuse Accommodation Syndrome" is not admissible under *Daubert*; the theory is not helpful or valid, nor is it relevant. The theory was one advanced in an article written in 1983 by Roland Summit. Summit himself never intended CSAAS to be a diagnosis (to tell whether abuse had occurred), he simply used it to treat children whose abuse was **assumed**. Yet, jurors in a child molest trial are asked to decide the precise issue which Summit rejected: **whether** abuse has occurred. In order to prove admissibility under *Daubert*, the proponent of the theory (the state) must present evidence that the theory has been tested, that it has been subject to peer review, that it has a known rate of error, or that it has been generally accepted. In this, the state must surely fail. Furthermore, the theory is not relevant in that it does not, as Rule 702 requires, "assist the trier of fact to understand the evidence or to determine a fact in issue."

"CSAAS"--a theory which its own author defends not for its forensic uses but only for treatment of children assumed to be victims.

Daubert also requires that such expert testimony be in conformity with the other rules of evidence. Yet, the danger of unfair prejudice from this untested theory which was never intended for the courtroom is overwhelming. *See* Rule 403. When *Daubert* was remanded, the Ninth Circuit came to the same conclusion that the trial court had originally reached under *Frye*: the expert opinions sought to be introduced were inadmissible. Part of that court's reasoning was that:

> In elucidating the "fit" requirement, the Supreme Court noted that scientific expert testimony carries special dangers to the fact-finding process because it "can be both powerful and quite misleading . . . ." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311 (9th Cir. 1995).

CSAAS testimony is totally lacking in "fit" in that, though extremely prejudicial, it does not "assist" the jury in deciding the issue: whether abuse has occurred.

In these cases in which the mere accusation is almost enough to convince jurors to convict, we must make the arguments and the record to prevent admission of this grossly prejudicial testimony. To do this, the defense bar must be prepared with objections to specific CSAAS questioning and the testimony as a whole. The defense must insist upon a hearing in which the state is made to carry its burden of proving **validity** (using the above four factors) and **relevance** (including "fit" or whether the CSAAS testimony is sufficiently tied to the facts that it will aid the jury in resolving the issue).

II. In addition to being inadmissible under *Daubert*, CSAAS testimony is inadmissible as expert testimony under Rule 702 and *Chapple*.

For such testimony to be admissible in Arizona, it must meet the four criteria of *State v. Chapple*, 135 Ariz. 281, 660 P.2d 1208 (1983):

1. Qualified expert,
2. Proper subject,
3. Conformity to generally accepted explanatory theory, and
4. Probative value compared to prejudicial effect.

A. The state's "expert" often is not qualified.

The training of many of the "experts" upon whom the state calls is often limited to a master's degree in e.g., counseling. Such a person does not qualify as a "mental health expert" for purposes of testifying as an expert witness on the subject of CSAAS pursuant to Rule 703. *See State v. Bailey*, 166 Ariz. 116, 800 P.2d 982 (App. 1982). The *Bailey* court, in deciding that a psychologist could testify as an expert at a propensity hearing, used the definition of "mental health expert" of Rule 11.3 of the Arizona Rules of Criminal Procedure which defines a "mental health expert" as "any licensed physician" or "any certified psychologist." Most of these so-called state's "experts" are neither. Before any court should defer to opinion testimony, the purveyor of that testimony must qualify as an expert; otherwise, the witness without any knowledge of the case who presumes to testify as an expert invades the province of the jury. The court in *Bailey, supra*, set the lower level of qualification at "psychologists"; it did not even suggest that holders of master's degrees in whatever subject can qualify as experts even those possessing a heightened interest in sexual matters. Certainly, the judge, who holds a doctor's degree, should not defer to a graduate student.

Those not qualified as experts in the subject of the testimony should always be precluded. To do otherwise, invades the province of the jury.

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B. CSAAS is not a proper subject for expert testimony.

CSAAS is not a proper subject for expert testimony. The "expert," who has no personal knowledge of the case or the victim, is called under 17A A.R.S. Rules of Evid., Rules 602, 703. Yet, the "syndrome" about which the "expert" testifies has not been proven by the state to be "of a type reasonably relied upon by experts in the particular field." Rule 703. The state's "experts" will be called to testify that the CSAAS theory describes how children react to sexual abuse. Most describe the theory as having two preconditions (secrecy and helplessness), then describe characteristics of abuse resulting from these preconditions (intimidation, accommodation, unconvincing disclosure, and then pressure to recant). Although the labels may be new to jurors, the substance is not beyond the common understanding or experience of the average juror and is, therefore, inadmissible. *State v. Lindsay*, 149 Ariz. 472, 720 P.2d 73 (1986); *State v. Moran*, 151 Ariz. 378, 728 P.2d 248 (1986). The average juror understands secrecy and helplessness in children. Moreover, the circumstances of the child sexual abuse case show no more secrecy than most burglaries. Minus the fancy labels, all of the "stages" these "experts" describe are within the common knowledge and expectations of the ordinary juror and are not admissible as expert testimony. *State v. Lindsey*, *supra*; *State v. Moran*, *supra*. Moreover, the "theory" seems to encompass all types of behavior, both functional and dysfunctional, to bolster the credibility of any child who makes such an accusation. *See State v. Tucker*, 165 Ariz. 340, 798 P.2d 1849 (1990): ". . . much of what the expert testified to, particularly with respect to what he called a 'conceptual model' for judging a child's veracity, is information that is within the common knowledge of everyone." 165 Ariz. at 346. The state's "expert" who testifies on the subject of "Child Sexual Abuse Accommodation Syndrome" must concede that the factors presented to the jury are not present in all cases: **some** of the factors are present in **some** cases (none of them the defendant's). The relevance of much of this testimony is questionable; the prejudice is obvious. Such testimony invites the jury to believe the child simply because the accusation had been made. This testimony should always be held inadmissible because it does not provide appreciable help to the jury (but it does prejudice them). *See Rourk v. State*, 170 Ariz. 6, 821 P.2d 273 (App. 1991).

We, as defense lawyers, have a responsibility to present these arguments to the trial court and rid this state of this inadmissible abomination.

CSAAS is not a sophisticated behavioral theory. It is junk science. The danger in allowing testimony as to this "syndrome" is that the pseudo-scientific terminology will mislead the jury into inferring that consistency with one or more of the behaviors described reflects a scientific judgment that the child was abused. *See People v. Bledsoe*, 36 Cal. 3d 236, 203 Cal. Rptr. 450, 681 P.2d 291 (1984). In 1988, a California court ruled that *Bledsoe* must be read to reject the use of CSAAS evidence as a predictor of child abuse. *People v. Bowker*, 249 Cal. Rptr. 886, 203 Cal. App. 3d 385 (4th Dist. 1988). In *Bowker*, the court said that applying the CSAAS theory to the facts of the case is improper; it is also improper to give "general" testimony describing the components of the syndrome in such a way as to allow the jury to apply the syndrome to the facts of the case and conclude the child was sexually abused. The court also noted that though the expert may be aware that the behavior described is also found in significant numbers of children who have **not** been molested, the jury may not be similarly cognizant. Finally, the *Bowker* court criticized the state for presenting such "general" testimony in its case-in-chief suggesting that the purpose was not to rebut defense attacks on the credibility of the appellant's accusers but to predict that abuse had occurred.

Simply stated, the CSAAS theory is not probative of abuse and is not a proper subject for expert testimony.

C. A hearing (*Frye* or *Daubert*) is necessary to determine admissibility under Rule 702.

If considering admission of such testimony, the court must hold a hearing to determine whether the CSAAS theory possesses an underlying scientific basis sufficient to permit expert testimony. See above discussion of *Daubert v. Merrell Dow Pharmaceuticals, Inc.* and *United States v. Gillespie*, 852 F.2d 475 (9th Cir. 1988). CSAAS should be held inadmissible under Rule 702; it cannot withstand scrutiny as valid scientific theory nor does it assist the trier of fact to determine guilt or innocence. The internal inconsistency of admitting such testimony is obvious: if the subject is not scientific or technical (and therefore need not be scrutinized for admissibility), then expert testimony on the subject is improper because it is within the general understanding of the jury.

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Without a determination as to whether the testimony would "assist the trier of fact to understand the evidence or to determine a fact in issue," the evidence is irrelevant under Rule 402. Without proof that the testimony is "of a type reasonably relied upon by experts in the particular field," it is inadmissible under Rule 703.

A qualifying hearing is necessary for admission of any such theory. Otherwise, such testimony amounts to nothing more than irrelevant musings. Further, if CSAAS need not qualify, then expert testimony on the subject is either unnecessary (because it is within the knowledge of jurors) or inadmissible as opinion testimony by a lay witness.

D. The prejudicial effect of CSAAS far exceeds any probity.

Because of its limited probity and vastly prejudicial effect, Kentucky courts have held that trial courts commit reversible error when they permit "the use of testimony regarding the so-called 'Child Sexual Abuse Accommodation Syndrome' to bolster the prosecution's case." *Hellstrom v. Commonwealth*, 825 S.W.2d 612 (1992) (citing *Bussey v. Commonwealth, Ky.*, 697 S.W.2d 139 (1985); *Lantrip v. Commonwealth, Ky.*, 713 S.W.2d 816 (1986); *Souder v. Commonwealth, Ky.*, 719 S.W.2d 730 (1986); *Hester v. Commonwealth, Ky.*, 734 S.W.2d 467 (1987) and *Mitchell v. Commonwealth, Ky.*, 777 S.W.2d 930 (1989)). The *Hellstrom* court found that the witness's testimony was not probative of whether sexual abuse occurred and invaded the province of the jury. (*Id.* at 614.)

. . . the defendant's conviction was affirmed because an improper objection was insufficient to preserve the issue for appeal . . .

Should the court be inclined to find some relevance in the testimony, ask the court to consider its prejudicial impact under Rule 403. The jury must be warned that underlying the CSAAS "theory" is the **assumption** that the defendant's accuser is telling the truth and the **assumption** that CSAAS is a valid theory. The effect of this testimony is an open invitation to the jury to decide that sexual abuse has occurred.

What little probity (if any) CSAAS may have under Rule 401 is vastly outweighed by its prejudice under Rule 403. We, as defense lawyers, have a responsibility to present these arguments to the trial court and rid this state of this inadmissible abomination.

III. CSAAS testimony itself constitutes inadmissible hearsay under Rule 801

Testimony regarding "Child Sexual Abuse Accommodation Syndrome" is written hearsay from an article published by Psychologist Roland Summit in 1983. As pure hearsay, the entire testimony should be precluded. It is doubtful that the state will call Roland Summit as a witness. Summit himself concedes that the theory is not meant for forensic use but was developed entirely for treatment purposes, the treatment being of children **assumed** to have been sexually abused. Summit's hypothesis cannot be cross-examined through any witness other than Summit. Therefore, the Sixth Amendment right to confront and cross-examine under the United States Constitution and the right to meet the accuser face to face under Article 2, Section 24 of the Arizona Constitution are violated every time the state calls an "expert" other than Summit himself.

IV. Objections to be made to admission of CSAAS testimony

Once the state gives notice of its intent to introduce CSAAS testimony, timely objections must be made. Under *Daubert*, objections should be made with regard to **validity**, **relevance**, and **inconformity with other rules** of evidence e.g., *403*. Under *Chapple*, the defense must be prepared to object that **the expert is not qualified**; CSAAS is **not a proper subject (improper expert opinion)**; CSAAS does not conform to a **generally accepted explanatory theory (foundation)**, and that **prejudicial effect outweighs probity**. In addition, the defense must object to the admission of **hearsay** and **denial of the right to confrontation**.

It is important that the defense anticipate the appropriate objections to be made. In a recent unpublished opinion in which the defendant's conviction was affirmed because an improper objection was insufficient to preserve the issue for appeal, the court of appeals judge wrote:

> Here, the prosecutor's first question was objectionable because it called upon the witness to answer a jury question, i.e., "was [X's] testimony reliable?" The Defendant could have preserved the issue by noting that the question called for [the witness] to (1) assess the credibility of another witness, (2) exceed the

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scope of expert testimony, or (3) invade the province of the jury. Counsel might even have accomplished this objective by noting that the question called for "improper opinion testimony: or "improper conclusion," or even by noting that [X's] testimony "speaks for itself." Instead, defense counsel objected on the grounds that the question called for speculation and that the witness was not qualified to render an opinion. Neither of these objections conveyed to the trial judge what was improper about the question.

V. Conclusion

We can, and we must, challenge the introduction of CSAAS testimony until Arizona, like Kentucky, decides that, since this very prejudicial testimony is not probative of whether sexual abuse has occurred and since it invades the province of the jury, its admission in any child sexual abuse case is reversible error.

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1. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. __, 113 S. Ct. 2786, 125 L.Ed.2d 469 (1993).

2. *Frye v. United States*, 293 F. 1013 (1923).

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Appellate Tidbit

A misdemeanor jail term may not be concurrent with a prison sentence. It is an unlawful sentence.

State v. Garcia, 165 Ariz. 547-48, 799 P.2d 887-88, n.1 (Ct.App. 1990); *State v. Harris*, 134 Ariz. 287, 655 P.2d 1339. n.1 (Ct.App. 1982).

submitted by Joel Glynn, Deputy Public Defender-- Appeals Division

RouND uP tHe UsUal sUspEcts

When is confidential--confidential?

"Tact," Jean Cocteau once wrote, "consists in knowing how far to go too far." A recent special action win originating in our Training Division may contain the answer.

Maricopa County Public Defender's Office et al. v. Rogers was decided April 23, 1996 granting the office relief (ordering the motions to withdraw previously denied by Judges Rogers and Seidel). An opinion is to follow.

When one of the lawyers who recently finished the office's training program (Diane Enos) said that Judge Alfred Rogers had ordered her to an ex parte proceeding to reveal confidential information from a former client's file before he would grant a motion to withdraw, I envisioned a Kodak moment--the two of us being dragged off to jail for refusing to divulge client confidences. No such luck. Judge Rogers said he "wouldn't order us to divulge the information," however, our motion would be denied.

The issue, of course, has been brewing for months and been the subject of more than one heated discussion among criminal defense lawyers. A common practice has been the "so-called" "confidential memorandum." That's when the lawyer reveals the confidential information to the judge, presumably *in camera*, to substantiate the conflict of interest. The problem, of course, is the information usually can only bias the judge against the present client (or even the former client should he appear before him or her). You get the picture. More importantly, there is no exception that Diane and I could find to ER 1.6.

The truth, of course, is that this is probably more about economics and power than ethics. It appears that far too many judicial officers simply refuse to recognize that public defenders are in fact "officers of the court." Our words should be just as good as any other officer of the court until proven otherwise.

Here's how we framed the issue (in case you have a similar one):

Is it an abuse of discretion for the trial court to require defense counsel to disclose confidential information about a present or former client before ruling on whether there is a conflict of interest with another client?

We called the case "between a rock and hard place." The primary argument being that "there is no exception in the Rules of Professional Conduct that allows

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defense counsel to divulge confidential information to a trial judge hearing a case, even during an ex parte proceeding." In fact, if you read ER 1.6 it's virtually absolute.

What some judges have failed to grasp is that the principle of confidentiality derives from two sources. One is the attorney-client privilege--which is an evidentiary issue. The second is ethical.

. . . far too many judicial officers simply refuse to recognize that public defenders are in fact "officers of the court."

The attorney-client privilege applies in judicial proceedings (and some others) when a lawyer may be called as a witness *or to produce evidence concerning a client*. But the ethical rule of lawyer-client confidentiality applies to situations other than when evidence is sought. In fact, lawyer-client confidentiality applies not merely to matters communicated in confidence by the client, *but also to all information relating to the representation, whatever its source*. See the comment to ER 1.6.

Additionally, as the special action stressed, the Maricopa County Public Defender's Office has developed its own internal policy to police frivolous motions to withdraw. And the public policy reasons prohibiting "screening" are strong.

Of course, case law is also supportive, as well as several commentaries. *See, for example, Successive Representation by Criminal Lawyers*, Yale Law Journal (penned by my former ASU Law Professor Gary Lowenthal).

In fact, *UHL v. Municipal Court of County of Marin*, 112 Cal. Rptr. 478, 37 Cal. App. 3d 526 (1974) is directly on point. In *Marin*, the court held that an attorney's avowal alone is sufficient to determine whether a conflict of interest exists. There is no need, according to *Marin* for a further showing of the facts and circumstances giving rise to the conflict of interest.

The Attorney General's Office filed a response for Judge Rogers. Their position, among others, was that the situation is analogous to one when a client is going to permit perjury (it isn't). It should be noted, however, that there are in fact instances where the rule is "court first, client second." Or in other words, it is true that a fraud on the court may under most circumstances "trump" ER 1.6. This ain't one of them.

Juvenile Records

The issue of juvenile records is also pertinent. Chelli Wallace, another Group D attorney, was confronted with a similar problem in Judge Seidel's court. She joined our special action and they were consolidated on appeal. The added issue in juvenile cases is that we (and the county attorneys) have access to a child's so-called "social file." That file, which is still off-limits to the public, usually contains a wealth of information, most of which hurts our clients.

Some judges have taken the position that as long as information about a client is "public," there is no conflict (this is a misapplication of ER 1.6).

The Court of Appeal's opinion should also address that issue.

Copies of the special action(s) are available from training. Call Sherry Pape at 506-8200. CJΩ

Liberty's Last Champions

by Christopher Johns, Deputy Public Defender--Training Director

Liberty means responsibility. That is why most men dread it. -- George Bernard Shaw

Television made him seem taller to me. There is, of course, nothing short about his ideas. Barry Scheck is one of us. A scrappy former New York Legal Aid Society public defender who got his start in the trenches defending poor people. A lawyer who, despite his success and high-profile derived from the O.J. Simpson case, still provides *pro bono* work for the Cardozo Law School's "Innocence Project" where he also teaches trial advocacy and ethics.

Scheck gave the closing remarks at the Institute for Criminal Defense Advocacy at the California Western School of Law on April 27.[1] Complete with his New York accent (although Barry attended Berkeley Law School and is a member of the California Bar).

So how does Scheck come across in person? As Eric Hoffer once wrote, "To have a grievance is to have a purpose in life." Barry Scheck has a grievance in life

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and it is to right injustice. He's fond of quoting Vaclar Havel, Czechoslovakia's playwright president, about liberty, individual responsibility, and most importantly the sacrifices ordinary people make for freedom. Scheck is a philosopher and lawyer. He believes fervently that what "we" do is crucial to democracy in this country and that the challenge is for each of us to do it well--or at least the best we can.

The O.J. Questions

But you know even Barry can't talk for two hours to 50 trial advocacy students and faculty about liberty and public defenders. Everyone wants to know about O.J. and to begin with Scheck is coy.

"To have a grievance is to have a purpose in life."

"I'm not doing a book," he says. "And I don't expect to do one. In fact I question the ethics of writing a book about O.J. while there is still a pending civil suit," notes Scheck.

"I think there are certain aspects of the case I should not even talk about." Scheck adds, however, "There are a few suitable for public discussion."

If it doesn't fit you must acquit

Scheck starts with the infamous leather gloves. After the marathon trial he talks about everyone on a first-name basis. "Chris, Marcia, Lee, Johnnie and Bob."

To begin with he says, we had already tried the gloves. "Lee" (Bailey) tried them on. They were tight on him and Lee is substantially smaller than O.J. The truth is Lee baited Chris into the gloves. He (Lee) kept telling Darden that he wasn't "man enough" to have O.J. try them on. The rest, of course, is history.

Detective Fuhrman

"They should have known about Fuhrman," says Scheck. In fact, Barry remains skeptical that they didn't. He points out that early in the proceedings the defense developed information from other sources that didn't make it in the trial. One episode involved a Jewish police officer who had good reason to suspect that Fuhrman crudely scratched a swastika on his police locker.

Early on Barry says the defense brought the information to prosecutor Hodgeman who basically stonewalled it. Since the incident was more than five years old, the prosecution argued that California's statutory provisions on police misconduct trumped the defense's *Brady motion*. Huh?

Scheck also points out that Chris Darden just about admits in his recently published book, *In Contempt*, that he didn't believe Fuhrman and thought he was lying. Darden, after having served in the unit prosecuting bad cops, had resources to learn a lot more about Fuhrman's reputation.

By the way, Scheck also notes that this case wasn't just about rich man's justice. There were 47 prosecutors working on the case.

The Closing Ethics

Among other things, Barry also teaches ethics at Cardozo Law School. So when it came to the closing, the defense knew there would be problems, especially from Marcia Clark. You'll recall, Barry objected 62 times during Clark's closing. And his perspective is if you don't object, it is waived (Scheck also does appeals). He says regardless of a judge who is reluctant to allow defense lawyers to object during closings, it is just part of good advocacy.

You may remember some of the more egregious examples by both Darden and Clark being: "I've prosecuted bad cops and Marcia and I would never allow that in this case." And, "I know the rest [of the police] are telling the truth." Talk about vouching.

Other lessons

Scheck says one of the biggest lessons that defense lawyers should learn from the Simpson trial is to question the crime labs. He thinks that the error rate and corruption of crime labs "goes much deeper than anyone thinks."

"Just like indigent defense," he says, "some crime labs are horribly underfunded." Many are not certified by any association and even those that are may not be regularly following protocols. "LAPD didn't even have an updated manual." Scheck also points out the numerous cases of manufactured or false evidence presented by charlatan coroners (the case of medical examiner Fred Zant in West Virginia).

"The extraordinary amount of corruption" that Scheck sees fits into his "Innocence Project." Scheck and

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other National Association of Criminal Defense Lawyers (NACDL) have been working for several years on an Imprisoned Innocent Committee to free falsely imprisoned people. Scheck and other lawyers have been using DNA technology to free falsely convicted individuals across the U.S. He speaks passionately about the numerous cases he's been involved in *pro bono*.

"You are," Scheck says, "liberty's last champions."

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1. Thanks to my mentor, Mara Siegel, I was invited as a faculty member for the Institute along with Jordan Green of Lewis & Roca. Mara is a regular faculty member at the Institute, but for health reasons was unable to attend this year. The nine-day Institute is developing a reputation as one of the premier trial advocacy programs in the nation. I was fortunate enough to co-teach with Nancy Hollander, Don Fiedler and Kay Sunday. Other faculty included Mario Conte, Juanita Brooks, Terry McCarthy, Joe Johnson, Tony Natale, and Vince April.

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Res Ipsa Loquitur

Despite efforts to correct public impressions of PD's, some misconceptions survive. My client's little old grandmother faithfully stood by, watching over him (and me) throughout the highly contested trial. Upon acquittal, she was tickled pink. With tears in her eyes, she bear-hugged me. "Honey," she said, "you were really good! When you get done with school, you should go to law school." What could I say to her compliment? "Why thank you, I'll have to consider it seriously."

submitted by Donna Elm, Deputy Public Defender and Trial Group D Supervisor-Designate

Five-Year Anniversary for CSC

by Peggy Simpson, Client Services Coordinator

The Client Services Coordinator (CSC) program will celebrate its five-year anniversary on May 28, 1996. We've had some adjustments in personnel, but other than that, our program has developed and become more fine-tuned until we can say that we know what we are doing most of the time.

We have been fortunate enough to have had the opportunity to attend some very informative seminars conducted by the National Association of Sentencing Advocates and the Sentencing Project. The seminars are geared to exactly what we do, and they have dynamite instructors from all parts of the United States as well as Canada. The seminars are not only informative but motivational and remind us we may be a small program here in Arizona, but we certainly are not alone.

Each of our coordinators has developed independently which may cause some confusion with attorneys and others we work with, but it has also allowed us to become "all that we can be." Our goals are the same even though we may travel slightly different roads to get there. The freedom to be different from one another has encouraged creativity and has kept the job interesting and challenging.

It has been a pleasure to work with the attorneys in this office. Like us, they have learned which cases are appropriate referrals and, for the most part, are very appreciative of our efforts. It is a strange and wonderful relationship that seems to have grown through the last five years, judging from the size of our case loads and the increasing quality of our referrals.

The challenge of working with our clients has been most rewarding. These often deeply-troubled individuals show their gratitude for our efforts in many ways. We often become therapists and confidants, in addition to advocates.

One of the challenging and often most frustrating aspects of the job is the never-ending battle to find services for our clients when so few exist. We are increasingly aware of the degree of mental illness and emotional disorders of our clients who need treatment rather than incarceration. It is also very frustrating when we achieve this difficult goal only to have the prosecutor,

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the presentence writer or the judge ignore our efforts and reject a client's opportunity for assistance in rehabilitation. It is less frustrating dealing with the clients than some of the "professionals" with whom we come into contact. We often walk a fine line between encouraging a client to have hope for a chance at rehabilitation and preparing them for a prison sentence.

We are very proud of Margi Breidenbach, our Group B Coordinator, who is pursuing a law degree. She has continued her duties on a part-time basis and has assisted in the training of our two new coordinators.

One of our newest projects, beginning this month, is employing the assistance of a justice studies major/statistician intern to compile data on our program. Rachel Gaxiola will be going through our files to gather information that we hope can be used to improve our program in the years ahead. We will be logging statistics on such issues as percentage of minority referrals, individual judges' sentencing practices, and the relationship between mental illness and drug usage.

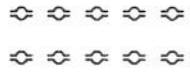
Recently completing their probationary period are Carol Johnson and Patrick Linderman. Carol is now the full-time Group B Coordinator and Patrick has tremendously lightened our load by taking over Group C.

Both Carol and Patrick bring sterling credentials to our little group. Carol has a master's degree in Social Work from Washington University's George Warren Brown School of Social Work and a juris doctor's from Washington University's School of Law of St. Louis, Missouri. Her job history includes one year as a Coordinator of Social Support Services for an AIDS Service Organization and three years as Sentencing Specialist for the Missouri State Public Defender's System's Alternative Sentencing Program.

Patrick has a degree in psychology from Iowa State University and a master's degree in Social Work from Arizona State University. He also has one year of Educational Psychology. His experience includes four years as a Family and Child Therapist in Arizona, and one year in New Mexico where he was often called upon to be an expert witness on mental health issues for teens. Patrick also has one year of experience as a sentencing advocate in New Mexico. We are certainly glad to have Patrick and Carol included in our little group.

We believe our CSC Program has saved taxpayers millions of dollars through structured probation plans as well as freeing attorneys to focus on the legal representation of our clients. In addition, we believe that we have provided a much needed social service to our clients who have often told us, "you are my only hope." Hopefully, we can continue to grow in the next five years both in numbers and quality of service.

Editor's Note: At the CSC Program's inception in 1991, the core group consisted of Margi Breidenbach, Pam Davis, Kevin Pollins, and Peggy Simpson. Ω



Arizona Advance Reports Volumes 206-213

by Max Bessler, Office of the Legal Defender

Judicial Issues

Coconino County Public Defender v. The Honorable Charles Adams, 206 Ariz. Adv. Rep. 14 (1995)

Joleen Ovind was found guilty except insane by the court and was committed to the state psychiatric security review board. Following her conviction, she requested a hearing before the board to determine if she could be released. Judge Adams appointed the public defender to represent her in this proceeding. The public defender moved to withdraw as counsel, arguing that such representation was outside the statutory duties outlined in A.R.S. §11-584. Judge Adams denied the motion, reasoning that because the board hearing was a "stage of the criminal proceeding" the public defender could represent her.

The court of appeals concluded ". . . that the trial court may not appoint a public defender in such a case . . . The duties of the public defender are clearly enumerated in A.R.S. §11-584(A) . . . Our supreme court has twice held that the language of A.R.S. §11-584 is clear and unambiguous and prohibits public defenders from defending persons outside the scope of the statute."

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Zarabia v. Bradshaw, Presiding Judge of Yuma County, 210 Ariz. Adv. Rep. 3 (1996)

To provide criminal representation to indigents in Yuma County, Judge Bradshaw established a system in which contract and private attorneys were appointed on a rotational basis. These attorneys may or may not have been practicing criminal law at the time of their appointments. All appointed attorneys were required to accept the cases assigned to them. Two appointed private attorneys, one contract attorney, and a criminal defendant filed a special action with the Arizona Supreme Court. They sought orders:

1) to vacate their appointments;
2) to require the scheduling of evidentiary hearing on the issues of competence and excessive case loads; and
3) a declaration that defendants represented by lawyers appointed under the present system are presumably receiving ineffective assistance of counsel.

The Arizona Supreme Court began by holding that

> . . . the Yuma County system of appointing private attorneys for indigent defendants offends the requirements of the statute and rule. First, appointment of lawyers on a random, rotational basis does not take 'into account the skill likely to be required in handling a particular case' Ariz.R.Crim.P 6.5(a) . . . We do not share [Judge Bradshaw's] optimism that an attorney . . . who has no trial or criminal experience, can become reasonably competent to represent a defendant . . . charged with a very serious crime, simply by having a mentor with whom to consult as the need may be perceived and the occasion arise.
>
> Yuma County is obligated by A.R.S. §13-4013 and Rule 6.5(c) to provide appointed counsel and pay such counsel reasonable and equitable compensation. Even a brief analysis of the county's system reveals that it fails to meet this standard . . . A compensation scheme that allows significantly less than their overhead expense is obviously unreasonable . . . It is impermissible for the presiding judge, in wholesale fashion, to transfer the public's constitutional obligation to pay the financial cost of indigent defense to the county's private lawyers.

The Arizona Supreme Court also addressed the matter in which Judge Bradshaw rejected, without a hearing, a contract attorney's letter expressing her concern that her case load was becoming excessive and she did not feel she could ethically accept further appointments. "This court established presumptive case load ceilings for criminal defense counsel in *State v. Joe U. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984). In that case, we pointed out the ethical obligation of defense counsel to manage their professional responsibilities so as to ensure that they are able to provide adequate representation to every client." The Arizona Supreme Court indicated the defense attorney's request for a hiatus of assignments should not have been summarily denied.

> For the reasons set forth above, we hold that the practice of rotational appointment of private attorneys adopted by Respondent violates both A.R.S. §13-4013 and Rule 6.5(c) . . . On a cautionary note, however, nothing we say here should be interpreted as limiting a judge's inherent authority to achieve justice by appointing a particular lawyer to represent a defendant or litigant in a particular case, even if the appointment is pro bono or causes a financial hardship to the appointed lawyer. There is a stark distinction, however, in requiring a lawyer to handle one case or a few and in conscripting lawyers to regularly handle all cases regardless of their ability or willingness to do so. We do not believe the court's inherent authority can extend so far. Whatever appointment process a court adopts should reflect the principle that lawyers have the right to refuse to be drafted on a systematic basis and put to work at any price to satisfy a county's obligations to provide counsel to indigent defendants.

Liability Issues

Adams v. The State of Arizona, 206 Ariz. Adv. Rep. 24 (1995)

The plaintiff is one of two sisters who, at the ages of seven and eight, were placed in a foster home by the Department of Economic Security (DES). Shortly after their placement in the foster home, the girls were molested by their foster father, who eventually adopted the girls. When the girls were 11 and 12, they reported the molestations to the police. The adoptive father was sentenced to prison and the adoptive mother was placed on probation.

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The girls sued the state and the DES social worker who was assigned to complete the court's review of the foster parents before the adoption was supposed to be approved by the court. They alleged both were negligent in that if they had followed the DES regulations, they would have discovered that their adoptive father had been sexually abused as a child, had previously sexually abused his adult stepdaughter during her teenage years, and that he was sexually abusing the girls soon after they were placed in his home.

The state and social worker moved for summary judgment based on absolute judicial immunity, relying in part on an affidavit from Judge Rose which stated that he "directed all adoption caseworkers to use the Guidelines; that strict compliance was mandatory and part of the judicial process of certifying adoptive parents." The trial court granted this motion, citing *Lavit v. Superior Court*, 173 Ariz. 96 (App. 1992) and *Maricopa County Juvenile Action No. JD-6236*, Ariz. Adv. Rep. 65 (App. 1994). The girls appealed.

"The nature and scope of judicial immunity raise perplexing and somewhat amorphous issues, which are not susceptible to easy resolution in some cases. This is such a case." Beginning with *Grimm v. Arizona Bd. Of Pardons and Paroles*, 115 Ariz. 260, 564 P.2d 1227 (1977) and moving to *Acevado v. Pima County Adult Probation Department*, 142 Ariz. 319, 690 P.2d 38 (1984), the court of appeals analyzed the merits of judicial immunity in relation to the facts of this case. As noted in *Acevado*, one basis for judicial immunity is acting pursuant to a court order. The court of appeals held the defendants were acting primarily upon statutes and not a court order. A second basis for judicial immunity is completing certain activities essential to the functioning of the judicial system.

> Examples include submitting presentence reports, *Acevado*; submitting child-custody evaluations and recommendations, *Lavit*; initiating the filing of child dependency petitions, *Nation and Meyers v. Contra Cost County Dept. Of Social Service*, 812 F.2d 1154 (9th Cir. 1987); submitting adoption recommendations, *Wooldridge v. Virginia*, 453 F.Supp. 1333 (E.D. Va. 1978); and making reports and recommendations to the court as a guardian *ad litem*, *Barr v. Day*, 124 Wash. 2d 318, 879 P.2d 912 (1994). *Acevado* and *Lavit*, however, did not address the type of investigative functions at issue in this case. Appellants challenge only the investigative and supervisory aspects of appellees' duties, not the submission of investigative and home study reports or certification and adoption recommendations to the juvenile court. While the latter function probably would be shielded by absolute immunity, appellees have cited no authority for granting such immunity for the former functions . . . Although the DES caseworkers undoubtedly worked closely with the juvenile court, we cannot say that their routine and statutorily-required investigative and supervisory functions were conducted as an integral part of the judicial process.

In reviewing this case for judicial immunity based upon "policy considerations," the court of appeals first reviewed "accountability" factors. "Appellees contend that . . . the juvenile court's review of investigative and home study reports submitted by caseworkers . . . are sufficient to hold caseworkers accountable for their actions. Theoretically that may be true, but we cannot say it was true in this case or is true in most cases."

The court of appeals went on to review if disallowing absolute immunity would deter acceptance or performance of the DES social workers duties as noted in *Lavit*. Since they are statutorily mandated to complete these investigations and the reports and recommendations are shielded by absolute immunity, the court of appeals did not find this a reason to grant immunity.

Thirdly, the court of appeals noted,

> The most important policy objective in granting absolute judicial immunity is to prevent undue influence from the threat of lawsuits and liability that could discourage fearless, independent action by public employees. *Grimm* . . . Without question, fearless decision making is critical to DES caseworkers submitting reports and making certification and adoption recommendations to the courts. We certainly want caseworkers to decide what is best for adoptive children without worrying about lawsuits from disgruntled adoptive parents. The same concern does not hold, however, for caseworkers' investigation of the adoptive parents and child or for supervision of adoptive family post-placement. Such activities do not require the same type of decision making. Indeed, the fear of potential liability should not deter DES caseworkers from freely and independently performing their jobs, but it arguably could motivate them to conduct

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thorough investigations and to closely supervise adoptive families. In turn, diligent investigation and supervision should improve the reports and recommendations caseworkers submit to the courts, ultimately benefitting adoptive children. It is, of course, the children's best interests that are paramount considerations in this context.

. . . In our view, the benefits of granting absolute immunity to appellees in this context are outweighed by the risks, most notably subjecting children to the potentially devastating and life-long damages of an ill-advised adoptive relationship. By this decision, we of course express no view on the merits or ultimate resolution of appellants' claims. In addition, we need not and do not decide whether appellees are shielded by qualified immunity . . . because those issues were not raised . . . We only hold that appellees are not absolutely immune from liability for the type of pre-adoptive investigative and supervisory negligence alleged here.

State v. Superior Court for Maricopa County, 210 Ariz. Adv. Rep. 32 (1996)

The trial court declined to grant qualified immunity to an Apache County Attorney's employee who was involved in a criminal investigation that included documents from a company in New Mexico. The investigator met with the president of the New Mexico firm and told him that he had a subpoena duces tecum, but the Arizona subpoena had no legal force in New Mexico. The president allowed him to seize and remove documents anyway. These documents were eventually determined in the criminal matter to have been illegally obtained because it was unclear if the president had consented to the search. Following the resolution of the criminal matter, the criminal defendant filed a civil suit against the investigator. The trial court in this matter declined to grant the investigator qualified immunity. The state appealed.

The court of appeals held that the investigator was protected by qualified immunity. "It is simply not possible to fairly conclude that a reasonable officer would have thought his search unlawful based on consent obtained in these circumstances. As a result, summary judgment upholding the qualified immunity defense was required."

Restitution/Death Penalty:
Aggravating/Mitigating Factors

State v. Spears, 207 Ariz. Adv. Rep. 3 (1996)

The defendant was convicted by a jury of first degree murder and theft, and sentenced to death. As part of the automatic review, the Arizona Supreme Court held that the trial court did not err in ordering restitution without a hearing for the victim's family's expense which included phone, probate attorney's fees, tax preparation fees, and funeral-related costs. "We believe that the family's funeral and travel expenses, and the 'customary and reasonable attorney's fees incurred to close the victim's estate' are proper restitutionary items."

The Arizona Supreme Court also reviewed the mitigating factors. The defendant was 33; age was not a mitigating factor. The defendant's lack of a prior criminal history was appropriately considered as a mitigating factor. The defendant's difficult family background was given minimal weight. Support by his mother did not translate into a mitigating factor. His spotty employment record was correctly not considered while his military history had some mitigating value. Good conduct in court and while incarcerated did not have to be considered. Cooperation with law enforcement was properly not considered. The defendant's conviction was affirmed.

Search and Seizure

State v. DeWitt, 208 Ariz. Adv. Rep. 23 (1996)

A police officer apprehended two burglars in the defendant's home while the defendant was away. Entering the home to look for evidence of a burglary, the officer observed chemicals and laboratory equipment. He called his supervisor to confirm his belief that the equipment was for the manufacture of drugs. His supervisor arrived, but could not confirm his suspicions. The Drug Enforcement Bureau was called. When their agents arrived and entered the home without a warrant, they confirmed that the equipment was for manufacturing drugs. The defendant was eventually convicted and sentenced to prison. On appeal, the defendant contended that the search by the Drug Enforcement officers was illegal and the evidence should be suppressed. The court of appeals confirmed the conviction. The defendant appealed to the Arizona Supreme Court.

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The Arizona Supreme Court held that the confirmation search by the Drug Enforcement officers epitomized the "search now, warrant later" theory. In a four-to-one decision, the supreme court vacated the court of appeals' decision and ruling allowing the evidence into trial and remanded the matter to the trial court.

Victims' Rights

A.H. v. Superior Court for Mohave County, 209 Ariz. Adv. Rep. 25 (1996)

Kenneth Inman pled guilty to attempted sexual conduct with the victim, A.H. Although conceding his guilt, he insisted that his conduct was not as serious as the state suggested. He subpoenaed the victim to testify at a presentence hearing. The victim's guardian *ad litem* sought to quash the subpoena, arguing the Victims' Bill of Rights allowed the victim to refuse to appear and testify. The trial court agreed that the victim's testimony would be helpful and relevant. He ordered a videotaped interview/deposition of the victim at which Inman would be excluded. The victim's attorney filed a special action.

The court of appeals began by noting that although a defendant does not have a constitutional right to confront and cross-examine his accusers at the sentencing stage, *State v. Ortiz*, 131 Ariz. 195 (1981), a defendant does have the right to compel the attendance of witnesses in his defense. *State v. Ramirez*, 178 Ariz. 116 (1994). This right extends to a defendant's sentencing hearing. *State ex rel. Dean v. City of Tucson*, 173 Ariz. 515, (App. 1992) held that victims could have to testify at pretrial hearings. Using the same logic, the court of appeals in this matter held

> . . . that a victim does not have a categorical right to refuse to appear and testify at presentence proceedings . . . We do not hold that a defendant in every case can compel a victim to testify at a mitigation hearing. When such testimony is clearly relevant and may be important to the sentencing outcome, the trial judge does have discretion to compel such testimony.

State v. Roscoe, 211 Ariz. Adv. Rep. 11 (1996)

The defendant was convicted of aggravated assault on a police officer. During the court proceedings, the defendant requested interviews with the officers/victims. They declined citing the Arizona Constitutional provision which grants a victim of a crime the right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant. The defendant cited A.R.S. §13-4433(F) and Arizona Rules of Criminal Procedure 39(b) which provide that peace officers shall not be considered "a victim" if they are acting in their official capacity when injured.

The court of appeals noted that neither the legislature nor the courts have the power to abrogate rights provided in the Constitution. "Courts must apply the plain language of the Victims' Bill of Rights . . . A.R.S. §14-4433(F) and Rule 39(b) are accordingly unconstitutional and the trial court correctly denied [the defendant's] request to interview the officers."

After the court of appeals affirmed, the defendant filed for review by the Arizona Supreme Court. That court held that the statutes and rule were in conflict with the Constitutional amendment and ". . . To the extent that they conflict with the definition of the term 'victim' as provided in the Victims' Bill of Rights, A.R.S. §13-4433(F) and Rule 39(b)(11), Ariz. R. Crim. P. are unconstitutional."

Undesignated Offenses

State v. Shlionsky, 209 Ariz. Adv. Rep. 30 (1996)

The defendant was convicted of possession of marijuana, a class 6 felony, with the court placing him on probation and allowing the charge to remain undesignated. During his probationary period, the state alleged six violations. The defendant admitted to five of them; the sixth, alleging a new crime, was dismissed. The court accepted the admissions, placed him on Intensive Probation Supervision, and designated the offense a felony. The defendant filed a petition for post-conviction relief, contending that 1) his right to due process was violated by designating the offense without giving him notice and an opportunity for an evidentiary hearing, 2) the felony designation was an abuse of discretion, 3) he was denied a right to allocution, and 4) the court had to wait until the end of probation to designate the offense a felony.

The court of appeals held that the 1984 amendment to A.R.S. §13-702(G) expands the trial court's discretion regarding designation of offenses.

> We therefore conclude that A.R.S. §13-702(G) permits the trial court to place the defendant on probation for a class six felony and "**may** . . .

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refrain from designating the offense as a felony or misdemeanor until the probation is terminated," but need not do so if future circumstances dictate otherwise. Thus, the court in this case did not err in designating petitioner's offense a felony at the disposition hearing, even though it continued petitioner on probation. [Emphasis added.]

In addressing the issue of notice, the court of appeals noted that the defendant was given notice of the disposition hearing and was present when the matter was designated. The defendant had originally requested a mitigation hearing but withdrew the request when he learned the court stated its intention to continue him on probation. When advised that the court intended to designate the offense a felony, the defendant did not request another mitigation hearing. The court of appeals held the defendant's right to due process was not violated. Nor did the court of appeals find that the trial court abused its discretion or denied the defendant his right to allocution. Relief was denied.

Prior Convictions

State v. Anderson, 210 Ariz. Adv. Rep. 25 (1996)

The defendant was charged with shoplifting liquor worth $90.00, a class 4 felony as a result of two prior shoplifting convictions in the past five years. He was sentenced to prison. The defendant appealed, arguing that during his previous misdemeanor convictions, he had not been advised of his right to counsel. The court of appeals agreed noting ". . . this has been the law in Arizona since at least 1968, and we reject the state's argument that a recent U.S. Supreme Court opinion requires a change in Arizona law." The conviction as a class 1 misdemeanor was affirmed. The case was remanded for resentencing. Ω

Trial Results

Public Defender's Office:

March 22

Charlie Vogel: Client charged with child abuse. Investigator D. Erb. Trial before Judge Bolton ended March 26. Defendant found not guilty. Prosecutor Kelly.

March 25

Curtis Beckman/Jeremy Mussman: Client charged with attempt to commit second degree murder. Investigator D. Erb and Litigation Assistant A. Fairchild. Trial before Judge Dougherty ended April 8 with a hung jury (6-2 guilty). (Second hung jury.) Prosecutor Shutts.

March 27

Jim Cleary: Client charged with two counts of sale of dangerous drugs, sale of marijuana, two counts of possession of drug paraphernalia, possession of narcotic drugs, and possession of heroin (with priors). Trial before Judge Gerst ended April 2. Defendant found guilty on all counts. Prosecutor Skibba.

Christine Israel and Emmet Ronan: Client charged with sexual conduct with a minor and child molestation. Investigator L. Clesceri. Trial before Judge Barker ended April 3. Defendant found guilty. Prosecutor Leisch.

March 28

Michelle Allen: Client charged with aggravated assault (dangerous). Investigator A. Velasquez. Trial before Judge Ryan ended April 2. Defendant found not guilty. Prosecutor Morden.

Charlie Vogel: Client charged with two counts of aggravated assault and two counts of endangerment. Investigator D. Erb. Trial before Judge Topf ended April 3. Defendant found guilty. Prosecutor Kane.

April 2

Elizabeth Feldman: Client charged with theft and trafficking in stolen property. Trial before Judge Sticht ended April 10. Defendant found not guilty. Prosecutor Gialketsis.

Jamie McAlister: Client charged with misconduct involving weapons. Trial before Judge Hertzberg ended April 4. Defendant found not guilty. Prosecutor Johnson.

April 5

Bud Duncan: Client charged with theft. Investigator D. Erb. Bench trial before Judge Anderson ended April 5. Defendant found not guilty. Prosecutor Schwartz.

April 7

Larry Grant: Client charged with resisting arrest. Trial before Judge Colosi ended April 17. Defendant found guilty. Prosecutor Myers.

April 8

Kevin Burns/Brad Bransky: Client charged with first degree murder, kidnapping, and sexual assault. Investigator P. Kasieta. Trial before Judge Reinstein ended April 15. Defendant found guilty. Prosecutor O'Connor.

Ray Vaca: Client charged with misconduct with a weapon, possession of methamphetamine, and aggravated assault (dangerous and with priors). Trial before Judge Araneta ended April 11. Defendant found guilty of aggravated assault and possession of methamphetamine. Misconduct with weapons charge dismissed after motion to suppress was granted. Allegation of priors was stricken on defense motion as untimely filed. Prosecutor Vincent.

Vonda Wilkins: Client charged with armed robbery and aggravated assault (dangerous). Investigator T. Thomas. Trial before Judge Armstrong ended April 11. Defendant found not guilty. Prosecutor Martinez.

April 9

Sylvina Cotto: Client charged with resisting arrest, misdemeanor DUI, and possession of marijuana. Investigator L. Clesceri. Trial before Judge Barker ended April 12 with a hung jury on DUI charge (7-1 guilty). Defendant found guilty of resisting arrest. Possession of marijuana charges were dismissed prior to trial. Prosecutor Rueter.

April 10

Larry Blieden: Client charged with two counts of aggravated assault and one count of disorderly conduct. Trial before Judge Dunevant ended April 19. Defendant found guilty of one count of aggravated assault and disorderly conduct. One count of aggravated assault was dismissed. Prosecutor Wildermuth.

Mike Hruby: Client charged with sexual assault, first degree burglary, two counts of aggravated assault and two counts of kidnapping (all dangerous except sexual assault). Trial before Judge Hertzberg ended April 19. Defendant found guilty of burglary, one count of aggravated assault, and lesser-included disorderly conduct (non-dangerous). Defendant found not guilty on one count of aggravated assault, one count of kidnapping and sexual assault, and received a judgment of acquittal on one count of kidnapping. Prosecutor Rapp.

Jen Tom/Colleen McNally: Client charged with attempted second degree burglary. Investigator P. Kasieta. Trial before Judge Wilkinson ended April 15. Defendant found guilty. Prosecutor Daiza.

April 11

Tom Timmer: Client charged with sexual conduct with a minor. Investigator R. Gissel. Trial before Judge Dougherty ended April 22 with a hung jury (second hung jury). Prosecutor Howe.

April 12

Robert Jung: Client charged with driving without a license, DWI, and driving while license suspended. Bench trial before Judge Pro Tem Fletcher (South Phoenix Justice Court) ended April 12. Defendant found not guilty on all counts. Prosecutor Grimes.

April 15

Yvette Gray/Colleen McNally: Client charged with aggravated DUI. Trial before Judge Topf ended April 18 in a mistrial. (Bailiff gave inadmissible evidence to jury.) Prosecutor Morrison.

Lisa Posada: Client charged with driving with suspended license (misdemeanor). Bench trial before Judge Guzman (Tolleson Justice Court) ended April 15. Defendant found not guilty. Prosecutor Grimes.

April 16

Tim Agan: Client charged with theft. Investigator P. Kasieta. Trial before Judge Ryan ended April 18. Defendant found guilty. Prosecutor McCormick.

April 17

Tom Kibler: Client charged with armed robbery and theft. Investigator H. Jackson. Trial before Judge Brown ended April 25. Defendant found guilty of lesser-included robbery. Prosecutor Baier.

April 22

Elizabeth Feldman/Michelle Allen: Client charged with armed robbery. Investigator D. Erb. Trial before Judge Gerst ended April 25. Defendant found guilty. Prosecutor Harris.

Michael Gerity/Candace Kent: Client charged with aggravated DUI. Trial before Judge Schafer ended April 23. Defendant found not guilty of aggravated DUI but guilty of lesser-included driving on a suspended license. Prosecutor Manning.

Liz Melamed: Client charged with attempted second degree burglary. Investigator R. Corbett. Trial before Judge Topf ended April 29. Defendant found guilty. Prosecutor Inciong.

April 23

Rob Reinhardt: Client charged with aggravated DUI. Trial before Judge de Leon ended April 25. Defendant found guilty. Prosecutor Davis.

Legal Defender's Office:

April 11

Catherine Hughes: Client charged with conspiracy to commit armed robbery, murder, two counts of aggravated assault, three counts of kidnapping, and three counts of attempted armed robbery (all dangerous except conspiracy). Trial before Judge O'Melia ended April 30 with judgment of acquittal on two counts of attempted armed robbery. Defendant found guilty of all other charges. Prosecutors Skull and Hanna.

April 15

Roland Steinle: Client charged with first degree murder and burglary (both dangerous). Investigator K. Brandenberger. Trial before Judge Araneta ended April 25. Defendant found guilty. Prosecutor Fenzel.

April 17

Greg Parzych: Client charged with sale of cocaine (with prior and while on parole). Investigator L. Desanta. Trial before Judge Ishikawa ended April 24. Defendant found not guilty. Prosecutor Vincent.

April 24

Scott Halverson: Client charged with non-residential burglary (with priors). Investigator L. Desanta. Trial before Judge McDougall ended April 26. Defendant found guilty. Prosecutor Lynch.

April 29

Charles Babbitt: Client charged with one count of offer to sell/transport narcotic drugs and two counts of possession for sale of narcotic drugs. Investigator E. Soto. Trial before Judge Dougherty ended April 30. Defendant found guilty on offer to sell; hung jury on two counts of possession for sale. Prosecutor Cathcart.

April 29

Neal Taylor: Client charged with third degree burglary (with priors). Investigator E. Soto. Trial before Judge Seidel ended May 02. Defendant found not guilty. Prosecutor Myers. Ω

Bulletin Board

◆ ***New Support Staff:***

Nelida Medina-Tatro started on May 06 as our newest Initial Services Specialist. Ms. Medina-Tatro, who comes from Puerto Rico, has been certified as a Spanish interpreter by the University of Arizona. She served as an interviewer for the Maricopa County Health Services Department and most recently was employed at the Head Start Program.

Andrew Swierski joined our office in February as an Initial Services Specialist. Mr. Swierski, who has a B.A. in Administration of Justice from Pennsylvania State, served for two years in the Peace Corps in the Dominican Republic (1993-1995).

◆ ***Speakers Bureau:***

Amy Curtis and Colleen McNally spoke to Chaparral High School students about the criminal justice system on April 24 at the request of the Honorable Ron Reinstein. In a thank-you letter to Ms. Curtis and Ms. McNally, the students' teacher noted, "I love the way you tell them the compassionate and caring side. The students have remarked many times that you seem very down to earth and explain the law and your job in a way that they truly understand. Thank you for that!"

David Moller, Lead Investigator in Trial Group C, conducted training on fingerprinting for the Boy Scouts' merit badge program at the request of Scoutmaster/Judge Colin Campbell. Fifteen boy scouts succeeded in earning their badges through the training which was held on April 24.

◆ ***Miscellaneous:***

Christopher Johns, Training Director, was recently named the 1996 recipient of the State Bar of Arizona's Award of Special Merit. This award recognizes "significant contributions by a member of the bar to the furtherance of public understanding of the legal system, the administration of justice, and confidence in the legal profession." The award will be presented to Mr. Johns during the State Bar's Annual Luncheon on June 7. Ω

Computer Corner

This column is designed to provide simple computer tips helpful to people in the legal field. These tips are fashioned for WordPerfect 5.1 in DOS. If you have any problems, questions or suggestions that you would like to share, please contact Ellen Hudak in Administration (506-6633).

Location, Location, Location:
To locate a previously typed document where you cannot remember the file-name or the approximate date of the file, use the following method: Press List Files (F5), make sure the path to the directory you want to search is showing and press (*Enter*) to list your files, then press *(9) F*ind, *(4) E*ntire Doc. Type one or two words from the document and press *(Enter)*. Your screen will then list the documents in which the selected group of words are listed. It is best to type your search phrase entirely in lowercase. Wordperfect will take you literally if you specifically capitalize any part of the search phrase, but it searches all case combinations if you type the search phrase all in lowercase.

Alt-V:
In a previous Computer Corner we informed you of a way to view your document by using a macro and saving several keystrokes. At that point, in order to print the document, we exited the macro or *View screen*, typed Shift (F8), selected (F7) for *Print*, and then the appropriate choice. However, to shorten this procedure even more, while viewing the document after using *Alt-V*, hit your space bar and the print screen appears.

Attributes:
There are two methods of ending attributes such as bold, underline, or italic: (1) type the same command again, once after the word to stop the command, or (2) hit the right arrow which takes you beyond the command and back to the mode of type prior to the command. If you have used two attributes, such as bold and italic, press the right arrow key twice.

Search:
To do an extended search, which includes headers, footers, footnotes, graphic boxes, and any other items not shown in the document window, press *(Home)* ***before*** pressing Search *(F2)*. To do an extended replace, press *(Home)*, Replace *(Alt+F2)*.

Repeat Macros:
To repeat a macro, press *(Esc)*, type the number of times you want the macro repeated, such as 4, then press Macro *(Alt-F10)*, type the macro name and press *(Enter)*.

Reblocking Text:
Sometimes you may want to apply several attributes to one word. Here's a quick way to do it. To apply the bold and underline attributes to a word or section already typed, block the text you want to make bold by pressing *Block (F12)*, highlighting the text and pressing *Bold (F6)*. To underline the same text, press *Block (F12)*, *Go To (Ctrl+Home)* twice and *Underline (F8)*. The text is immediately blocked and underlined.

Brainteaser for May.[1]
(Answer will be in June's issue of "***for The Defense***")

JUST FOR FUN

JOB I'M JOB

[1]Answer to April's "Brainteaser" is **Shadowboxing**

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